

STRAITS SETTLEMENTS REPORTS.

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STRAITS ECHO PRESS LTD. vs. BOARD OF MANAGEMENT OF WAR RISKS (GOODS) INSURANCE FUND.

[Original Civil Jurisdiction (Carey, J.) Sept. 1, 1941]

War Risks (Goods) Insurance Ordinance 1941 S. 3,—whether newsprint used in publishing paper is goods insurable under the Ordinance—Interpretation of War Legislation.

The plaintiff company were printers and publishers of a newspaper and as such held a stock of newsprint. The question raised in the originating summons was whether the plaintiffs were liable to insure the newsprint under the War Risks Ordinance. The Chairman of the defendant board had given as his opinion that newsprint was insurable compulsorily as it was a commodity used as a component part of newspapers held for sale by the proprietor. With this opinion the plaintiff company did not agree. It was argued for them that they did not sell newsprint or paper but the news itself and that news being intangible, non-physical and incorporeal were not "goods" at all.

Held, that the newsprint was used as a material from which newspapers were produced and was a component part of a newspaper. Persons carrying on business in the Colony as sellers of newspapers produced by them must insure under the Ordinance any materials, commodities or articles used as material from which newspapers were produced and used as a component part of newspapers, for example newsprint.

Semle. The language of the Ordinance should be interpreted with reference to its general scope, without drawing any nice distinctions, inasmuch as the Ordinance was in its nature emergency legislation designed, not for the good of the individual, but for that of the population as a whole.

Cases referred to:—

- (1) *The Noordam* (1920) A.C. 904.
- (2) *Pearks' Dairies v. Tottenham Food Control Committee* 120 L.T.R. 95.
- (3) *Rex v. Dickinson* (1920) 3 K.B. 552.
- (4) *Mee v. Toone* (1940) 1 K.B. 638.

T. E. Conaghan for plaintiff company.

E. A. de Buriatte for defendant board.

Carey, J.—This Originating Summons was applied for in order that the following questions might be determined:—

1. Whether upon the true construction of the War Risks (Goods) Insurance Ordinance the plaintiff is a person carrying on business in the Colony as a seller of goods viz. newsprint held solely for the purpose of publishing a newspaper within the meaning of section 3 of the said Ordinance.

2. Whether upon the true construction of the said Ordinance newsprint held solely for the purpose of publishing a newspaper is goods which shall be deemed to be goods insurable under the said Ordinance within the meaning of section 3 (1) (a) (ii) or section 3 (1) (b) thereof.

3. If the answers to Nos. 1 and/or 2 are or is in the negative for a declaration that the plaintiff is not liable to insure the said newsprint under the War Risks (Goods) Insurance Ordinance.

The plaintiff company prints and publishes the newspaper known as the "Straits Echo and Times of Malaya". The plaintiff company holds a stock of 500 rolls of newsprint of the value of \$50,000.

Newsprint is virgin paper of the type used for newspapers. It is not sold as newsprint by the plaintiff company, but is used exclusively for the purpose of publishing news and other matters usually published in a newspaper when the same has been printed thereon.

The plaintiff company asked for the opinion of the chairman of the defendant board as to whether or not newsprint is insurable under the War Risks (Goods) Insurance Ordinance, 1941.

The Chairman of the defendant board gave as his opinion that newsprint is insurable compulsorily as it is a commodity used as a component part of newspapers held for sale by the proprietor.

The plaintiff company does not agree with the opinion of the chairman of the defendant board.

The War Risks (Goods) Insurance Ordinance, 1941 (No. 19 of 1941) (hereinafter called "the Ordinance") came into force on the 2nd day of July 1941 (Notification No. S 409 in Gazette Supplement No. 63 dated the 27th June, 1941).

In section 2 of the Ordinance goods are defined in so far as is relevant as "any materials, commodities or articles other than money". "Person" includes "a firm" according to the Interpretation Ordinance (Chapter 2).

Section 7 of the Ordinance provides:—

(1) No person shall after such date as may be specified in this behalf by the Governor in Council by notification in the Gazette carry on any business in the Colony as a seller of goods unless, in respect of any goods insurable under this Ordinance which are for the time being owned by him in the course of that business—

(a) there is in force a policy of insurance against war risks issued in accordance with the Scheme whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being; or

(b) there is in force in relation to any description of goods of which he is a seller an order made under the provisions of subsection (5) of section 5 of this Ordinance and he has duly complied with the provisions of such order so as to be deemed under the provisions of subsection (7) of that section to be insured in respect of such goods for a sum not less than the value thereof for the time being: Provided that nothing in this subsection shall restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable under this Ordinance which are for the time being owned by him within any one Settlement in the course of that business does not exceed such amount as may be prescribed in this behalf.

(2) Whoever contravenes the provisions of subsection (1) shall be punishable with fine which may extend to one thousand dollars and with a further fine which may extend to five hundred dollars for every day after the first on which the contravention continues.

The amount prescribed for the purposes of the proviso to section 7 (1) (b) is \$10,000 [Notification No. S 209 in Gazette Supplement No. 34 of the 21st March, 1941 under The Defence (Insurance of Goods) Regulations, 1941. War Risks (Goods) Insurance Scheme Rules, 1941, rule 8, these regulations having been saved by section 17 (1) of the Ordinance.]

Section 3 of the Ordinance is as follows:—

(1) Subject to the provisions of this section—

(a) the following goods shall, in relation to any person carrying on business in the Colony as a seller of goods of any description produced by him, be deemed to be goods insurable under this Ordinance, that is to say, all goods situated in the Colony being either—

(i) goods of that description, or

(ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description; and

(b) the following goods shall, in relation to any person carrying on business in the Colony as a seller of goods of any description not produced by him, be deemed to be goods insurable under this Ordinance, that is to say, all goods of that description being goods situated in the Colony.

(2) In relation to a person carrying on in the Colony the business of selling agricultural products produced by him, all agricultural products for the time being situated in the Colony shall, subject to the following provisions of this section, be deemed to be goods insurable under this Ordinance:

Provided that the Governor in Council may by general or special order direct that the provisions of section 7 shall not operate so as to require a person to be insured in respect of any goods which, in relation to that person would not, apart from the provisions of this subsection, be goods insurable under this Ordinance.

(3) Things which, in relation to a person carrying on any business as a seller of goods, are at any time goods insurable under this Ordinance shall not cease to be goods so insurable by reason only that they are subsequently placed in or affixed to land under a contract of sale entered into by that person in the course of that business.

(4) The Governor in Council may, by notification in the Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Ordinance.

Mr. Conaghan for the plaintiff company contends that as the Ordinance removes the discretion of the man of business thereby encroaching on his rights and placing a pecuniary burden upon him the Ordinance must be construed strictly. He relies on certain passages in *Maxwell* on the Interpretation of Statutes.

He went on to argue that it is not newsprint or paper or printing that the plaintiff company sells, but the news itself which is intangible, non-physical, incorporeal and that news does not constitute goods and newspapers are repugnant to the definition of goods. Newsprint is imported by a trading concern and is not produced by the plaintiff company. The plaintiff company does not carry on business in the Colony as a seller of newsprint. Newsprint is not sold by the plaintiff company and the buyer of a newspaper does not buy the paper but the news that is thereon. The paper is merely the medium to convey the news and the paper and print without the ability to appreciate the latter prevent the article being a newspaper.

The only provision that might have any application is subsection 1 (a) (ii) of section 3 of the Ordinance, but as newspapers do not come within the category, newsprint is not insurable. Newsprint becomes something different when it is a newspaper.

Mr. Conaghan referred to the list of goods deemed not to be insurable set forth in Notification No. S 207 in Gazette Supplement No. 34 of the 21st March 1941. Item 31 thereof is printing machinery of certain descriptions and Item 41 paintings in oil or water colours, pencil, ink and charcoal, drawings and pastels on canvas or paper (including Board) and hand printed impressions taken from blocks, plates or like material, whether framed or unframed; and sculpture, whether in the round, in relief or in intaglio. He submitted that drawings, pastels and paintings are in the nature of a newspaper.—This part of his argument I think is more against him than for him because if the legislature exclude articles of a certain nature and not others of a similar nature the omission must be taken as intentional.—He referred also to the Instructions attached to the application form given in the Third Schedule of Notification No. S 209, The War Risks (Goods) Insurance Scheme Rules, 1941, published in Gazette Supplement No. 34 of the 21st March, 1941.

Instruction 2 is "GOODS INSURABLE": The law defines the goods to which the scheme applies; these include goods (with certain exceptions) which are held for sale by persons carrying on business

as sellers of goods, such as manufacturers, wholesale distributors and retailers, including the raw materials from which goods are manufactured and goods in process of manufacture.

He submitted that the plaintiff company is not a manufacturer, wholesale distributor or retailer.

Mr. Conaghan also relied on a ruling dated the 29th May 1941 given to Messrs Bennie S. Cohen & Son (Malaya) Ltd., by the chairman of the Board of Management, War Risks (Goods) Insurance Fund. Therein the chairman stated that chemicals and other materials incidental to a process of manufacture and also packing materials are not insurable and that as between loose rubber and rubber packed in bales and cases the value of the latter should include the value of the cases or bales for the purpose of value for insurance since the packed rubber is worth more because of the value of the packing materials. In reply to letters of the 17th and 20th May from the North British & Mercantile Insurance Co. Ltd. at Singapore the same chairman on the 23rd May 1941 wrote that packing materials on estates and in dealers' godowns are not held for sale and are therefore not insurable.

Mr. Conaghan's point on these rulings, so-called, is that newsprint is analogous to the packing cases and packing materials held for packing; that newsprint is a wrapping.

Mr. de Buriatte for the defendant board called the manager of the plaintiff company for examination, who admitted that the stocks of paper (i.e. newsprint) held by him are part of the material from which the newspaper is produced.

Mr. de Buriatte's argument is that there is no ambiguity in section 3 of the Ordinance, but even should there be, the Court must aim at bringing as many persons as possible within the ambit of the Scheme in order to further the policy of the Ordinance. He referred to passages in judgments in the cases of *The Noordam*⁽¹⁾; *Pearks' Dairies v. Tottenham Food Control Committee*⁽²⁾; *Rex v. Dickinson*⁽³⁾ and *Mee v. Toone*⁽⁴⁾.

Hardship to an individual must not be considered. The object and scope of the legislation in making insurance of goods compulsory is to encourage sellers of goods to keep up the quantity of their stocks in the knowledge that if it is lost through enemy action they will be indemnified; to maintain as far as possible the trade of the Colony during war time; stocks destroyed by enemy action being replaced at the expense of the common fund.

Paper is the means whereby news is disseminated. The Straits Echo sells newspapers and newsprint is used as a material from which the newspapers are produced. Newsprint is an ingredient or component part of a newspaper. It is insurable under section 3 (1) (a) (ii) of the Ordinance, but even if it is not, it is caught by section 3 (1) (b).

Mr. Conaghan in reply indicated *inter alia* that the English War Risks Insurance Act 1939 adopts the definition of "goods" given in the Sale of Goods Act i.e. (in so far as is relevant in this case) "goods" include all chattels personal other than things in action and money.

All tangible movable property is covered by that definition but there is nothing tangible in news which is sold. Newspaper undoubtedly is "goods" but newsprint is repugnant to the definition of goods in the Ordinance.

To analyse the section—any materials, commodities or articles other than money is the definition of goods in the Ordinance. That certainly covers newsprint, though I doubt that it would cover news. Keeping this in mind let us see how section 3 (1) (a) applies. Subject to the provisions of this section—in relation to any person (which includes firm) carrying on business in the Colony as a seller of goods of any description produced by him, the following goods shall be deemed to be goods insurable under this Ordinance, that is to say, all goods situated in the Colony being either (1) or (ii). I stop to consider that portion. I have transposed the opening part of the subsection (a). The meaning is unaltered but is easier to appreciate. The term "seller of goods of any description" must mean what it conveys. It goes further than the definition of "goods", otherwise there is no object in adding the words "of any description". In other words one is not restricted to materials, commodities or articles in construing the term, so long as the person is carrying on business in the Colony as a seller of something which is capable of being termed goods in its widest sense and which is produced by him.

Thus far, the Straits Echo Press Ltd. carries on business in the Colony as a seller of newspapers produced by them. Now all goods situated in the Colony that are goods of that description i.e. coming within the wider sense if sold and produced by the seller are insurable under the Ordinance if they are goods of the description produced by the seller of such goods or are goods used as material from which goods of that description are produced. The phrase

"goods used as a material", the word "materials" being employed in the definition of "goods" is perhaps rather unfortunate.

The wording of the section of the English Act corresponding to section 3 was adopted, apparently without regard to the different definition of the word "goods".

However it seems to me that newsprint is used as a material from which newspapers are produced and it is a component part of a newspaper and therefore the person carrying on business in the Colony as a seller of newspapers produced by him must insure under the Ordinance any materials, commodities or articles used as material from which newspapers are produced or used as a component part of newspapers e.g. newsprint.

It is not possible to dissociate the paper from the news imprinted thereon. The very term "newspaper" connotes the employment of both news and paper in order to the production of the whole.

Newsprint would not come within subsection (b) of section 3 (1) in so far as the Straits Echo Press Ltd. is concerned, as it is not goods of the description which the Straits Echo Press Ltd. sells viz. newspapers.

Even were I not satisfied that the language of the Ordinance covers the case in question without ambiguity, I should still be prepared to hold that, having regard to the judgments in the cases of *The Noordam* (supra), *Pearks' Dairies v. Tottenham Food Control Committee* (supra) and *Mee v. Toone* (supra), the language of the Ordinance legitimately may be interpreted with reference to its general scope, without drawing very nice distinctions, inasmuch as the Ordinance is in its nature emergency legislation, designed, not for the good of the individual but for that of the population as a whole.

To answer specifically the questions formulated in the originating summons:—

(1) The plaintiff does not sell newsprint as such.

(2) Newsprint held solely for the purpose of publishing a newspaper is goods insurable under the Ordinance within the meaning of section 3 (1) (a) (ii) thereof but not within the meaning of section 3 (1) (b) thereof.

(3) The plaintiff is liable to insure the said newsprint under the War Risks (Goods) Insurance Ordinance, 1941.

Order Accordingly.

KOH SEK LIM vs. MARRIOTT.

[Original Civil Jurisdiction (Aitken, J.), May 9, 1941]

An example of a case in which a Plaintiff who occasionally lent money on interest was held not to be a moneylender within the meaning of the Moneylenders Ordinance.

J. K. Gale for plaintiff.

V. J. Mendis for defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Aitken, J.—The Statement of Claim in this case reads as follows:—

"The Plaintiff's claim is for the sum of \$1,046.58 being the amount of principal and interest due from the Defendant to the Plaintiff by virtue of a Promissory Note made by the Defendant in favour of the Plaintiff and dated the 7th May 1940 whereby the Defendant promised to pay the sum of \$1,250.00 (being as to \$1,000.00 principal and \$250.00 interest) by eight equal monthly instalments. The said Promissory Note contained a proviso that in default of payment of any instalment when due and should such default continue for a period of ten days then on demand the whole of the instalments should become immediately due and payable. The first instalment is in default for over ten days and demand has been made for the whole amount due.

PARTICULARS.

7.5.1940.	To principal due	..	..	\$1,000.00
7.5.1940	to	..	..	
31.7.1940.	„ interest on \$1,000.00 at 20%	..	..	46.58
	per annum	..	..	
				<u>\$1,046.58</u>

In the alternative the Plaintiff claims the said sum of \$1,046.58 as money lent by the Plaintiff to the Defendant with agreed interest thereon.

And the Plaintiff further claims interest on the said sum of \$1,000.00 from the 1st August 1940 until payment or Judgment at 20% per annum."

There is no dispute about the facts out of which this claim arises.

On the 15th of January, 1940, the Plaintiff lent the Defendant \$500, and the Defendant, along with another person, signed a promissory note for \$636, to be paid by six equal consecutive monthly instalments of \$106. By way of security the Defendant gave the Plaintiff a note declaring that the former had sold his Motor Boat to the latter for \$600.

The Defendant paid the February, March and April 1940 instalments on this promissory note, but wrote to the Plaintiff an undated letter at the beginning of May, 1940, stating that he would not be able to pay that month's instalment as it fell due.